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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No 261

MARYLAND CASUALTY COMPANY,
Petitioner,

vs.

MRS. IDA C. BOULT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Respectfully submitted,

MARYLAND CASUALTY COMPANY,
BY: JOHN BRUNINI,
VICKSBURG, MISSISSIPPI,
Counsel for Petitioner.

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No._____

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vs.

MRS. IDA C. BOULT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

PETITION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Maryland Casualty Company, respectfully prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered in the above entilted cause on April 19, 1940, reversing the judgment of the District Court of the United States for the Western Division of the Southern District of the State of Mississippi.

STATEMENT OF MATTER INVOLVED

Mrs. Ida C. Boult was plaintiff in the District Court, appellant in the Circuit Court of Appeals and is respondent here. The Maryland Casualty Company was defendant in the District Court, appellee in the Circuit Court of Appeals and is your petitioner here.

Your petitioner shows to this Honorable Court that the Circuit Court of Appeals of the Fifth Circuit ordered a reversal of judgment for it on an accident insurance policy, and in so doing departed from the accepted and usual course of judicial proceedings to such an extent as to call for the exercise of this court's power of supervision, and also decided an important question of Mississippi law in a way in conflict with the applicable Mississippi decisions, as well as the weight of authority.

The petition of respondent alleged that the assured, her husband, died as the result of injuries received in an automobile accident. The petitioner denied that the assured died of the result of an injury.

THE INSURANCE CONTRACT

The contract of insurance sued on is set out in full in the record. The principal amount of the policy, the sum sued for, is $7,500.00. The contract is a combined accident and sickness policy, providing for specific losses from accidents, and the payment of monthly sums during disability occasioned by illness. In the event of death from accidental injury, the sum of $7,500.00 is to be paid. The pertinent portions of the policy read:

> "(1) against loss or disability as herein defined, resulting from Bodily Injury, effected solely through External, Violent and Accidental Means, independently and exclusively of disease, whether disease pre-exists or be afterward contracted, and all other causes, and

"(2) against Disability from Sickness, independent of injury, whether injury pre-exists or be afterward sustained . . ."

ALLEGED ACCIDENTAL INJURY

The assured, R. W. Boult, while driving his automobile, without any apparent reason therefor ran his car up on the curbing and on to the grass plot adjoining a street. He got out of the car, was assisted to his home, where he died six hours later from what was diagnosed as a stroke of apoplexy, that is, a cerebral hemorrhage. He had received no bruises, no blows of any kind, and his body was absolutely unmarked. According to respondent's expert physicians the assured died as the result of the excitement of running up on the curbing, causing his blood pressure to rise and bursting one or more blood vessels. These physicians testified that the blood vessels must have been weak or that there existed at the time an aneurysm, that is, a bulge in the blood vessel.

There were certain undisputed actions of the assured immediately prior to his driving upon the curbing which conclusively show the beginning of the stroke. Reasonable men could not differ as to the abnormality of such actions.

WHAT THE COURT DID

The case was tried on its merits before a jury. At the conclusion of the testimony, petitioner requested, in the proper form, a directed verdict. This the District Court over-ruled, permitting the case to go to the jury. The latter returned a verdict in favor of respondent for the full amount of the policy. Thereupon petitioner filed its motion in the alternative either for a directed verdict or for a new trial. The District Court granted the motion for a directed verdict notwithstanding the verdict of the jury. From this action of the District Court respondent appealed to the Circuit Court of Appeals, which court reversed the judgment of the District Court in granting the motion for a directed verdict and remanded the cause to the

District Court for judgment to be entered in accordance with the opinion, which in effect directed the District Court to render judgment for respondent. The District Court thereupon entered judgment in favor of respondent for the sum of $7,500.00.

The action of the Circuit Court of Appeals in reversing the judgment of the District Court placed a construction upon the contract sued on which greatly extended the liability of the insurer beyond the fair meaning of the language used in the policy and misinterpreted the decisions of the state of Mississippi. By its opinion the Circuit Court of Appeals has in effect stricken from the insurance policy all provisions that the injury and death must be independent and exclusive of disease, whether the same pre-exists or be afterward contracted. At the same time, in its opinion the appellate court ignored the record, holding that reasonable men could differ as to the proof.

REASONS FOR THE ALLOWANCE OF THE WRIT

FIRST: There is not sufficient evidence in the record to sustain a verdict of accidental death, independent and exclusive of disease, as defined and set out in the contract of insurance sued on; and in holding that there was sufficient evidence the Circuit Court of Appeals decided a question of general and Mississippi law in a way that is untenable.

SECOND: The Circuit Court of Appeals in disposing of this case in the construction of the contract sued on substantially extended the liability of the petitioner beyond the terms of the contract and ignored well-recognized rules of law and the Mississippi rule of law governing the construction of contracts, the construction given by the Court of Appeals being against the weight of authority.

Your petitioner is advised that the judgment of the Circuit Court of Appeals and the judgment of the District Court based thereon are erroneous and this Honorable Court should re-

quire the case to be certified to it for its review and determination for the reasons here given and the reasons stated in the accompanying brief.

WHEREFORE, your petitioner, Maryland Casualty Company, respectfully prays that a writ of certiorari be issued under the Seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, commanding the court to certify and send to this court for its review and determination, on a day to be designated, a full and complete transcript of the record of the case, numbered and entitled on its docket: "No. 9268—Mrs. Ida C. Boult, appellant, vs. Maryland Casualty Company, appellee", and that such judgment of the Circuit Court of Appeals and the judgment of the District Court based thereon be reviewed by this Honorable Court, and that petitioner may have such further and other relief in the premises as to this Honorable Court may seem meet and just.

JOHN BRUNINI,
Counsel for Petitioner.